HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7710 of 2006

Dated:16.11.2006

Between:

Babburi Devender and others.

…Petitioners

and

The Joint Collector and others.

…Respondents

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7710 of 2006

ORDER:

The petitioners and respondents 4 to 7 are legal heirs of Babburi Narasimha, Narayana and Venkatesh, who constituted a joint family owning lands in Survey Nos.1/AA, 5/AA, 110/AA, 13/AA, 32, 40/EE, 78/EE and 79/AA situated at Inamguda Village of Hayathnagar Mandal in Ranga Reddy District. It appears respondents 4 to 7, who are legal heirs of Narasimha, filed an appeal before the second respondent under Section 5(5) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act'). The same was allowed by order dated 26.04.2004. Aggrieved by the same, the petitioners herein preferred a revision under Section 9 of the Act before the first respondent, who by impugned order dated 06.12.2005 in Case No.D5/2493/2004 disposed of the same observing that both the parties may approach the civil Court to work out the remedies. The first respondent also directed that till the rights are adjudicated, the order passed by the Revenue Divisional Officer should not be given effect to.

This Court while admitting the Writ Petition suspended the impugned order to the extent of directing the petitioners herein to approach the civil Court. The contesting respondents 4 to 7 now

moved this Court by filing W.V.M.P.No.1432 of 2006. However, the matter is heard finally and is being disposed of by this order.

Learned Counsel for the petitioners submits that when there was no civil dispute between the petitioners and respondents 4 to 7, it was improper for the Joint Collector to direct the parties to approach the civil Court. He also submits that the Revenue Divisional Officer passed orders on 26.04.2004 ordering mutation in favour of respondents 4 to 9 without notice to the petitioners and for this reason the Joint Collector ought to have allowed the revision petition. **Per contra**, the learned Senior Counsel appearing for respondents 4 to 7 submits that the Mandal Revenue Officer changed the entries in the revenue records without any notice to the contesting respondents, and therefore, the Revenue Divisional Officer was correct in allowing the appeal under Section 5(5) of the Act. He also submits that the pattas granted to the petitioners were subsequently cancelled, and therefore, there was really no dispute at all.

From the pleadings it is clear that petitioners 1 to 4 are claiming a share as belonging to one branch of the joint family whereas respondents 4 to 7 belong to other branch. Petitioner No.5 is the lone son of Babburi Venkatesh, who was also a member of the joint family. When this is admitted, whether the Revenue Divisional Officer was correct in changing the entries in favour of respondents 4 to 7, is a matter for enquiry. Therefore, without proper reasons one cannot come to conclusion that there is a civil dispute among the members of the joint family. In **R.S.Murthy v. Joint Collector**[1], this Court laid down as under.

> When a person files an application for correction of pass book, he cannot be asked to file a Civil suit because some third party has raised the question of adverse possession therein. It is true that the revenue authorities cannot decide the questions of title and possession, but subject to any decree or order that may be passed in a civil suit, the revenue authorities should exercise their statutory power.

After exercising statutory power given to them, if the recording authority or the revisional authority comes to a conclusion that there are disputes regarding the documents relied on by the parties or disputes regarding partition of the property among the members of the joint family, it is always open to the recording authority to decline

exercise of statutory powers. The first respondent passed orders without even discussing the rival claims and the evidence relied on by them. For this reason alone, the impugned order cannot be sustained.

Accordingly the Writ Petition is disposed of. The impugned order of the Joint Collector is set aside and the matter is remitted back to the first respondent with a direction to give notice to the petitioners and respondents 4 to 7, permit them to produce evidence, and pass appropriate orders after affording an opportunity of being heard. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Till then there shall be *status quo* as on today. No costs.

(V.V.S.RAO, J)

16.11.2006
vs

[1] 2001(4) ALT 337 (DB)